

Remarks

Claim 1 is amended and claim 16 is canceled. Claims 1 – 15 and 18 are pending herein upon entry of this amendment.

The abstract of the disclosure has been amended to further describe specific examples of the invention.

The Examiner has rejected the previously submitted claims under U.S.C 103(a) as being unpatentable over Crosby et al. (US 6,455,469).

Crosby et al. teach a herbicidal composition comprising A) at least one acetanilide derivative and B) at least one other herbicide selected from a substantial list of possibilities. Among the many possible herbicides, triketones, such as sulcotrione or mesotrione, and glyphosate are mentioned.

In finding a case of *prima facie* obviousness – the Examiner suggests that “it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the instant herbicidal combination of 2-(substituted benzoyl)-1,3-cyclohexanedione or metal chelate thereof, glyphosate or a salt thereof and an acetamide to unwanted vegetation”; and that “[O]ne of ordinary skill in the art would have been motivated to do this because Crosby et al. suggests [such] herbicidal compositions ...”.

Applicants respectively disagree with the Examiner’s finding of *prima facie* obviousness. Contrary to the Examiner’s assertion, Applicants believe that Crosby provides no such motivation. Clearly the specific selection of triketones and glyphosate from the substantial list of possibilities has only been motivated by the teaching of the present invention. None of the preferred embodiments taught by Crosby envisage such a combination. Furthermore, while Crosby teaches “at least one other herbicide” it is clear from the complete Crosby disclosure (including the examples provided) that binary combinations – rather than tertiary / quaternary combinations such as those of the present application are envisaged.

The teaching of Crosby – via the specific examples provided - also strongly suggests pre-emergence application of the herbicide composition (see for example Test Example 1 column 17, lines 29-30 “ herbicide treatments were applied to the soil surface”) and Test Example 2, column 18 lines 46 “immediately after planting the maize, herbicide treatments were applied.....”. Thus, with regard to the specific teaching of Crosby there is nothing to motivate the person skilled in the art to adopt a post-emergence application to which the claims are now limited. There simply is no reason

that a skilled artisan would have considered modifying Crosby in the manner suggested by the Examiner; the instant record does not support a *prima facie* case of obviousness. See, e.g., Eisai Co. v. Dr. Reddy's Laboratories, Ltd. (Fed. Cir. 2008).

The Examiner further suggests that the Applicants have not defined the length of time required for seasonal control. On the contrary, season control is defined on page 2, lines 4-6 as "generally up to 120 days long, for example from 40 to 120 days.....". The Examples (Table 4 and Table 5) provided by Crosby show weed control at 35 days – with regard to "broadleaf control" and (S. viridis control). The broadleaf weed species include, for example, *Abutilon theophrasti* (column 18, line 43). It can be seen that some of the herbicidal combinations taught by Crosby provide good broadleaf control at 35 days. However, the data provided in respect of the present application (page 10) with regard to *Abuthilon theophtasti* indicates that the level of control using the 2-way mix of mesotrione and glyphosate worked well for 29 and 34 DAA, providing 99% control, but that this had dropped to only 67% at 47 DAA. However, the 3/4-way combination to which the present application relates continues to provide good (season long) weed control (>90%) at 47 DAA.

In view of the above it is submitted that a finding of *prima facie* obviousness in view of Crosby et al. does not actually exist – indeed the only motivation to combine the disclosure of Crosby et al. in the manner suggested by the Examiner comes from an impermissible hindsight reference to the teaching of the present invention.

In view of the foregoing amendments and remarks, Applicants submit that the claims are in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested, along with the issuance of a Notice of Allowance.

Respectfully submitted,

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7706

/William A. Teoli, Jr./
William A. Teoli, Jr.
Attorney for Applicants
Reg. No. 33,104

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